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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

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No. 843

EMILIANO BENAVIDES,

Petitioner,

vs.

THE STATE OF TEXAS.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS.

M. C. GONZALES,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

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EMILIANO BENAVIDES,

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vs.

THE STATE OF TEXAS.

To the Honorable Supreme Court of the United States:

Now comes Emiliano Benavides, petitioner, herein and most respectfully presents to this Honorable Court this his petition for a Writ of Certiorari to the Court of Criminal Appeals of the State of Texas and asks that it review the record in the case of Emiliano Benavides v. The State of Texas, being No. 21,542, in said State Court, and in which cause the Honorable Court of Criminal Appeals of the State of Texas affirmed the death penalty assessed against this petitioner by the 51st District Court of Schleicher County, Texas, on the second day of October, 1940. The opinion finally affirming said death sentence was handed down by the said Court of Criminal Appeals on the 8th day of October, 1941. A certified copy of the record in said cause accompanies this petition and is hereby referred to and made a part hereof.

The basis of this prosecution was the murder of Henry Calcote on a ranch near the town of Eldorado in Schleicher County, Texas, on or about September 5, 1940. Petitioner was indicted on the 18th day of September, 1940, by the Grand Jury of Schleicher County and he was tried on September 30, 1940, the trial ending October 2, 1940, with the death penalty assessed by the jury as aforesaid. Petitioner duly and timely filed his motion for new trial, which was overruled by the trial court, notice of appeal was given and appeal taken to the Court of Criminal Appeals of the State of Texas, which court finally affirmed said cause on October 8, 1941. On October 10, 1941, petitioner filed motion to stay mandate and the Court of Criminal Appeals on October 10, 1941, granted said motion and gave petitioner ninety days to present application for Writ of Certiorari to the Supreme Court of the United States (please see R. 111).

The judgment appealed from appears on page 32 of the transcript filed herewith.

The statute believed to sustain appellate jurisdiction by the granting of a Writ of Certiorari by this Honorable Court is Title 28, Section 344, paragraph (b) of the United States Code.

This petitioner will most respectfully show this Court that the trial court erred in the trial of the case and its Court of Criminal Appeals erred in affirming the judgment of the trial court, and this Court should grant the relief herein prayed for, for the following reasons:

1. Petitioner was inhumanly tortured to obtain a confession which was used in the trial of the case before the jury (R. 62-63).

2. Appellant, after being arraigned and pleading not guilty September 30, 1940, at the beginning of the trial of the case, later, on October 1st, 1940, after the jury was selected, under duress, and under the threat of death by

lynching, changed the plea of not guilty to a plea of guilty, and which plea was accepted by the court, and such facts were made known to the Trial Judge on his motion for a new trial (R. 62-63).

3. Petitioner was forced to be tried by an admittedly prejudiced and biased jury (R. 56).

4. Your petitioner was arrested in Mexico by an officer of the Mexican Army and delivered across the border in Texas in violation of the extradition treaty of 1899 between the United States of America and Mexico (R. 62).

Petitioner avers that his rights under the due process provision of the 5th and 14th Amendment to the United States Constitution were violated and that this case is believed to come within the jurisdiction of this Honorable Court under the authority of the following cases:

Chambers et al. v. *State of Florida,* 60 Sup. Ct. Rep. 472, 309 U. S. 227;
White v. *State,* 60 Sup. Ct. Rep. 1032, 310 U. S. 530.

WHEREFORE, your petitioner most respectfully prays the Court to consider this petition and the certified copy of the transcript of the record attached and that a Writ of Certiorari be granted as provided by law in such cases and, on final hearing, petitioner be granted all relief entitled to under the Constitution and laws of the United States.

Respectfully submitted,

M. C. GONZALES,
Attorney for Petitioner.